

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**FAO No. 4 of 2004
and
FAO No. 228 of 2006**

Judgment reserved on: 14.12.2007

Date of decision: 20.12.2007

1. FAO No. 4 of 2004

Narender Singh Pathania ..Appellant

Versus

Rajender Prasad Kapoor and others ..Respondents

Mr. M.S.Guleria, counsel for the appellant.

Mr. B.K.Malhotra, counsel for respondent No. 1.

Mr. G.R.Palsra, counsel for respondent No. 2.

Mr. G.D.Sharma, counsel for respondent No. 3.

Mr. Shashi Kant Verma, counsel for respondent No. 4.

Mr. K.D.Sood, counsel for respondent No. 5.

2. FAO No. 228 of 2006 of 2004

Hirender Singh Pathania ..Appellant

Versus

Rajender Prasad Kapoor and others ..Respondents

Mr. M. S.Guleria, counsel for the appellant.

Mr. Harish Behal, counsel for respondent No. 1.

Mr. Sanjeev Sood, vice counsel for respondent no. 2.

Mr. Deepak Bhasin, counsel for respondent No. 3.

Coram

The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr. Justice Judge.

***Whether approved for reporting?*¹**

Deepak Gupta, J.

This judgment shall dispose of these two
FAOs as they arise out of the same accident.

Narender Singh Pathania, claimant in FAO No. 4 of 2004, was riding as a pillion rider on the scooter of his son, Harender Singh pathania on 2.3.2000. They were traveling from Bagla to Mandi. When they reached near Gutkar, bus No. HP-33-1127 came from Mandi side and hit the scooter. The right leg of the claimant was injured. He was shifted to the hospital at Mandi where after giving him first aid, he was immediately shifted to PGI, Chandigarh where his right leg was amputated above the knee. Two claim petitions were filed; one by Narender Singh claiming compensation of Rs. 9,48,538/- for compensation on account of injury suffered by him and the other petition was filed by his son Harender Singh Pathania, claiming compensation to the tune of Rs. 50,000/- for damage to his scooter and injuries suffered by him. Both the claim petitions were disposed of by the

¹ *Whether the reporters of the local papers may be allowed to see the Judgment?*

learned M.A.C.T. (II), Mandi. Petition of Narender Singh was decided on 26.12.2002 and the learned tribunal held that the accident had occurred due to rash and negligent driving of the driver of the bus and awarded Rs. 2,00,000/- as compensation. The claimant aggrieved against the said award has filed FAO No. 4 of 2004. In the other case the learned Tribunal has come to the conclusion that though the accident occurred, but no injuries were caused to the claimant and the damage to the scooter has not been proved and, therefore, dismissed the petition. Aggrieved against the said award, the claimant has filed FAO No. 228 of 2006.

As far as question of negligence is concerned, the finding of the Tribunal has attained finality.

Coming to the question of compensation in FAO No. 4 of 2004, the undisputed facts are that the appellant, at the time of the accident, was 76 years of age. He had retired from army service. He alleged that he was the proprietor of M/s Jyoti Tiles Bagla and was running this business, but did not produce any documentary evidence to prove the fact that he is the owner of such a business. No income tax returns, sales tax returns, labour registers etc. have been produced on record. However, the facts which stand proved are that

the appellant after remaining in hospital in Mandi for one day was referred to PGI, Chandigarh where his right leg was amputated above the knee. The appellant has made an highly exaggerated claim and during the course of evidence has inflated his claim to even more than the amount claimed in the petition.

The appellant's disability has been assessed at 80% and this has been proved on record by PW-1 Dr. Harish Behl. PW-3-claimant while appearing in witness box has stated that he was admitted on the night intervening 2/3rd March, 2000 in PGI, Chandigarh and remained there till 26.4.2000. According to him Rs. 90,538/- was spent as per Annexure PW-3/A. He has prepared another detail, Ex.PW-3/B of his expenses amounting to Rs. 11,58,446/-. Both these details are details prepared on one piece of paper totally unsupported by any other document. These are details prepared by the claimant himself. He has, however, produced certain documents which have not been taken into consideration by the trial court. These are original bills of medicines Ex.PW-3/G to Ex. PW-3/W. The claimant has alleged that now he cannot work and has employed one person to help him and is paying that person Rs. 2,000/- per month. He has also claimed that

on account of accident he cannot look after his business and, therefore, his business has gone down. He has produced document Ex. PW-3/Y which is purportedly the extract of trading accounts from the year 1997-98 to 2000-2001. Here also the appellant has not produce the original accounts books and has just produced an extract prepared by him. In cross examination he has stated that he has not produced any document to show that he is the proprietor of M/s Jayanti Tiles. He has stated that he can produce such documentary proof as well as the original accounts books, but no effort has been made to produce the same till date. In cross examination he has admitted that the artificial limb which he is using has been supplied to him free of cost by the Army. He, however, submits that he has to get this limb changed after one year.

The principles with regard to determination of just compensation contemplated under the Motor Vehicles Act are well settled. Injuries cause deprivation to the body which entitles the claimant to claim damages. The damages may vary according to the gravity of the injuries sustained by the claimant in the accident. On account of the injuries the claimant may suffer consequential losses such as, (i) loss of earning; (ii) expenses on treatment which may include medical

expenses, transportation, special diet, attendant charges etc. and (iii) loss or diminution to the pleasures of life by loss of a particular part of the body and (iv) loss of future earning capacity. The damages can be pecuniary as well as non pecuniary, but all have to be assessed in Rupees and Paise. It is impossible to equate human suffering and personal deprivation with money. However, this is what the Motor Vehicles Act enjoins upon the Courts to do. The Court has to make a judicious attempt to award damages, so as to compensate the claimant for the loss suffered by him. Such compensation is what is termed as just compensation. On the one hand, the compensation should not be assessed very conservatively, but on the other hand, compensation should also not be assessed in so liberal a fashion so as to make it a bounty to the claimant. The Court while assessing the compensation should have regard to the degree of deprivation and the loss caused by the such deprivation. The compensation or damages assessed for the personal injuries should be substantial damages to compensate the injured for the deprivation suffered by him throughout his life. They should not be only token damages.

The learned trial court while dealing with the issue of compensation has totally misdirected itself. The

assessment of compensation has not been made as per the norms laid down by this court in various cases. The compensation has not been assessed under the various heads, but lump-sum compensation of Rs. 2,00,000/- has been awarded. The assessment of compensation has to be made for pecuniary as well as for non pecuniary loss. As is evident from Ex. PW-3/E, the appellant was admitted in PGI, Chandigarh on 3.3.2000 and was discharged on 6.3.2000 and his leg was amputated on 4.3.2000. At the time of discharge, some medicines were prescribed to the appellant, but there is no documentary proof on record to show that the appellant ever went back to PGI, Chandigarh for his treatment. The only documents of expenses proved on record are Ex. PW-3/G to Ex. PW-3/W. These relate to his treatment from 2nd to 5th March, 2000 and some medicines purchased thereafter on 14th March and 18th March, 2000. Out of these documents two documents are vouchers of Jayanti Tiles only. These vouchers are in respect of some taxi charges, but the original bills have not been placed on record. Therefore, these cannot be taken into consideration. The amount which has been proved on record to have been spent, works out to Rs. 8513.44 paise. Assuming that at that time the appellant or his relatives may have not kept

entire bills, the medical expenses even taking at a very liberal view of the matter, cannot exceed Rs. 15,000/-.

The appellant was taken to PGI, Chandigarh from Mandi and was brought back to Mandi from Chandigarh after treatment. Even though the documents on record have not been proved, it can be reasonably assumed that Rs. 5,000/- must have been spent as transportation charges.

The appellant was in hospital at Chandigarh for 4 days. He thereafter necessarily must have remained bed ridden for a couple of months and would have definitely required constant attendance during this period. He is awarded Rs. 10,000/- as cost of attendance which would include the boarding and lodging at Chandigarh.

The appellant is also awarded Rs. 5,000/- for special diet which he may have consumed during the period he was under treatment.

It has been urged on behalf of the appellant that he has to get artificial limb changed regularly and that for purchase of fresh artificial limb he requires approximately Rs. 1,50,000/-. Admittedly, the appellant has been provided artificial limb free of cost by the Army. No medical evidence worth the name has been led by the appellant to show that it is essential for him to get this

limb changed. In fact this limb has not been changed till date, otherwise the appellant would have moved some application in this behalf. This claim is rejected.

As far as the loss of future income is concerned, as held above, the appellant has failed to lead any cogent or reliable evidence to show that he was the owner of Jayanti Tiles. He has failed to prove his income prior to the accident or after the accident. It is apparent that the appellant has been busy concocting material and creating evidence. The documents Ex. PW-3/A, Ex. PW-3/B and Ex. PW-3/Y relied upon by the appellant are not worth the paper they are written on. Similarly, the claim of the appellant for having appointed an attendant is without any basis. No doctor has stated that the appellant is unable to look after himself. He may be facing difficulty for which separate compensation has been granted to him, but his version that he has permanently appointed an attendant for looking after him does not appear to be true.

Next comes the question with regard to the amount to be awarded to the appellant for loss of expectation of life as well as the disability suffered by him. There is no doubt that the appellant due to the injury suffered by him cannot work or live like before. He is using an artificial limb. He cannot walk around as before.

Therefore, he is awarded a sum of Rs. 1,00,000/- for the loss of the pleasures of life on account of disability suffered by him. The appellant is also awarded Rs. 1,00,000/- on account of pains, suffering and agony undergone by him. These awards have been made keeping into consideration the fact that the appellant is 76 years old.

In view of the above discussion the award is modified and compensation is awarded to the tune of Rs. 2,35,000/- alongwith interest @ 9% per annum from the date of filing of the petition till realization of the amount. The award of the Tribunal is modified accordingly.

FAO No. 228 of 2006

As far as FAO No. 228 of 2006 is concerned, I have gone through the entire record. The entire evidence led by the appellant is only in respect of the damage to his scooter. No evidence whatsoever has been led in respect of the injury allegedly suffered by him. The accident took place in the year 2000 and no bills of the said time have been produced. The appellant has also examined PW-2 Sukhnidhan Singh, proprietor of S.S. Automobile, Ramnagar, Mandi who has stated that he had repaired the scooter and charged Rs. 6,636/- from the appellant. The learned trial court has rejected the

claim on the ground that the estimate Ex.PW-2/A and Ex. PW-2/B are undated and the bills Ex. PW-2/C, PW-2/D and Ex. PW-2/E for a total sum of Rs. 6,636/- are dated 4th April, 2003. I have seen the bills in question. They are dated 4th April, 2003. The accident took place in the year 2000. According to PW-2 he did not repair the scooter till April, 2003 since the appellant did not pay him any amount and it was only in April, 2003 he repaired the scooter. This version is totally false and incorrect. No person would let his scooter remained unrepaired and unserviceable for more than three years. The learned trial court has rightly rejected the claim.

Accordingly FAO No. 4 of 2004 is partly allowed and the award of the learned Tribunal is modified and the compensation enhanced from Rs. 2,00,000/- to Rs. 2,35,000/- alongwith interest @ 9% per annum from the date of filing of the petition till realization of the amount. FAO No. 228 of 2006 is dismissed. No order as to costs.

December 20, 2007(K)

(Deepak Gupta), J.